

**Delta Protection Commission Meeting  
January 19, 2023**

**AGENDA ITEM 14: Report on Section 106 Consultation for Delta Conveyance Project**

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**Requested Action: Receive report on National Historic Preservation Act, Section 106 Consultation with US Army Corps of Engineers on the Delta Conveyance Project**

Type of Action: Information Only

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**Background:** This report details the strategy Commission staff have been using to protect the Delta's heritage resources from adverse effects of the Department of Water Resources (DWR) proposed Delta Conveyance Project (DCP, or tunnel). This activity has been a regular briefing item in the Executive Director's report relating to the National Historic Preservation Act (NHPA) Section 106 process since the November 2020 Commission meeting. Recent staff reports on the tunnel project Environmental Impact Report (EIR) have also noted the importance of the Section 106 process. The work builds on understanding of the Delta's historic and cultural resources gained during development of the feasibility study for Sacramento-San Joaquin Delta National Heritage Area (NHA). It helps fulfill the Commission's responsibility under Section 29703.5(a) of the Delta Protection Act to provide a forum for Delta residents to engage in decisions regarding actions to recognize and enhance the unique values and cultural resources of the Delta. It also draws on the Commission's authority to provide recommendations to the Delta Stewardship Council (Council) on methods of preserving the Delta as an evolving place as the Council implements the Delta Plan.

**Applicable State and Federal Laws:** This approach rests on four state and federal laws:

- Delta Protection Act as amended by the Delta Reform Act
- California Environmental Quality Act (CEQA)
- National Environmental Policy Act (NEPA)
- National Historic Preservation Act (NHPA)

Over the two years that this effort has been underway, in addition to reports to the Commission, periodic newsletters (<https://delta.ca.gov/delta-water/>) have shared our work with interested Delta stakeholders. This effort will likely continue for several more years of the tunnel's review and permitting, consistent with other Commission priorities.

**Key Elements:** Key elements of the strategy include:

- Survey of Historic and Cultural Resources. In October 2020, the US Army Corps of Engineers (Corps), which is considering permits for DWR's proposed tunnel, requested that Commission staff share information about historic resources that the project could affect. In response, staff prepared and sent to the Corps a survey of the Delta's historic features based on guidelines for information required in the project's review. The survey follows the themes of the Delta NHA feasibility study and includes information from the Commission's "Delta Narratives" report (<https://delta.ca.gov/wp-content/uploads/2021/05/Delta-Narratives-Report-and-Appendices-508.pdf>), supplemented by additional research and reviews by historians, landscape architects, Delta community organizations, and staff at the affected counties. The survey has since been updated several times and is titled, "Cultural Resources of the Sacramento-San Joaquin Delta in the Delta Conveyance Project Area." We are currently in the process of finalizing this survey.

The survey takes a broad view of the Delta's historic resources. It asserts that areas in the Delta affected by the tunnel project are part of a "significant cultural landscape" whose historic resources warrant protection. The culture of the landscape at stake is primarily agriculture, which in the Delta developed early and with features that define the Delta landscape's character. These features include small riverside communities, including Hood, adjoining farms and riversides along the Sacramento River and State Route 160, the shaft launch sites and tunnel muck storage sites on Twin Cities Road and Roberts Island, and shaft retrieval sites in San Joaquin and Contra Costa counties.

Staff's approach is a purposely broader approach than that of the earlier Bay-Delta Conservation Plan and California WaterFix, which treated the Delta's historic resources as a series of individual buildings or communities, most already recognized on official national or state lists. That approach limited the analysis of historic and cultural resources impacts to focus only on specific damage to individual structures or the designated historic districts. As a result, impacts like noise or traffic congestion that threatened the surrounding ambient context of these resources were not adequately analyzed. Furthermore, damage to the broader context of rivers, sloughs, farms, and other landscape features by construction of project facilities was not at all considered.

- CEQA and NEPA. Both CEQA and NEPA require consideration of impacts to cultural resources, including historic properties. Alternatives that could avoid adverse impacts must be identified and feasible measures to mitigate damage must be proposed. In the

Commission's 2022 comments on the DCP EIR, staff drew on the survey to identify historic buildings and districts that the project would damage and potential ways to avoid or reduce impacts. These include both sites listed on the state or national registers of historic places as well as sites that Commission staff believe meet state and federal criteria for listing. Staff's comments also address land use, noise, and visual effects, in part because they are recognized as affecting the setting of historic properties. We expect to take a similar approach with comments on the NEPA Environmental Impact Statement (EIS) as outlined in Agenda Item 15. The NEPA comments will likely be more extensive because of the Corps' role as lead agency for the EIS, in implementing the NHPA.

- NHPA Section 106. The NHPA's Section 106 requires federal agencies to consider the effects of projects they carry out, approve, or fund on historic properties. For the Delta tunnel, the responsible federal agency is the U.S. Army Corps of Engineers (Corps). The tunnel's surface impacts, including disposal of tunnel material, filling of wetlands, alteration or encroachment on federal project levees, and crossings under navigable waters are within the Corps' jurisdiction.

Most of the Section 106 review would typically take place between DWR, the Corps, and the State Historic Preservation Office. The Corps will also consult with federally recognized tribes when a project has the potential to affect historic properties on or off tribal lands. Local governments and others with an interest in the affected historic resources can also become "additional consulting parties," with Corps permission. In 2020, Commission staff requested and were granted additional consulting party status to the Corps' Section 106 review, joined in 2021 by the counties of Sacramento, San Joaquin, Yolo, and Contra Costa.

As consulting parties, Commission staff and the counties have expanded opportunities to advise the Corps on the scope of the area where the project may affect historic properties, the project's potential adverse effects, measures that should be considered to avoid or reduce that harm, and, ultimately, the agreement the Corps may reach with the state, affected tribes, and potentially other consulting parties, to implement those measures included in the Corps' approval. While consulting parties may have expanded input, they cannot use the Section 106 process to block the project or address issues such as the tunnel's impacts on water resources that are not relevant to protecting historic properties.

For complex projects where not all resources that may be affected can be identified, a programmatic approach may be taken which addresses the geographic area and general scope where effects on historic properties will be considered, with procedures laid out

for the timing of more detailed reviews of the effects on specific areas. The Corps proposed a draft Programmatic Agreement early in 2022 for which Commission staff and the counties provided comments. A revised agreement is anticipated but has not yet been completed for consideration and further discussion.

- NHPA Section 110. The strategy includes exploring additional tools within the NHPA. For example, Locke is a National Historic Landmark (NHL) eligible for additional protections. During the WaterFix review, the Locke Foundation and others worried that its fragile businesses could suffer during any significant long-term decline in visitor travel to the region. NHPA's Section 110(f) requires the Corps to go beyond merely considering an NHL's historic resources, but to undertake to the maximum extent planning and actions that may be needed to minimize any direct or indirect harm to the landmark. The national Advisory Council on Historic Preservation (ACHP) must be consulted about resolving adverse effects on Locke, and the office of the Secretary of Interior may become involved, which provides an opportunity for national visibility and oversight of the Corps' actions in the Section 106 process.
- Delta Reform Act. The Delta Plan, with which the DCP must be consistent, requires compliance with measures to mitigate impacts to the environment, including cultural resources that may be eligible for state or federal registers of historic properties. Avoidance through project redesign is the preferred mitigation measure. Additional measures to protect archaeological sites are required.

**Next Steps:** We expect the Corps to provide an updated draft of a proposed Section 106 Programmatic Agreement to us and the affected counties and tribes in the coming months. We will present it to the Commission for consideration, potentially as a signatory. If the proposed agreement is not acceptable, the Commission can reconsider further participation in the Section 106 process.

**Recommended Action:** Receive report.

**Relationship to Vision 2030 (Commission strategic plan):**

**Water (Strategic Theme)**

*W.1 Promote Delta water solutions that reduce reliance on Delta fresh water supplies, provide through-Delta fresh water conveyance to protect Delta water quality and water rights, and protect and enhance the Delta's natural resources, recreation, agriculture, adjacent urban areas and economies.*

*1.3 Analyze proposals for addressing water supply reliability for compatibility with Delta values.*

*Heritage (Strategic Theme)*

*H.2 Protect and promote the tribal, cultural, and historical resources of the Delta.*

*2.2 Advance recognition of the national significance and unique stories of the Delta and support implementation of associated projects ... .*